

AMENDED IN SENATE AUGUST 28, 2007

AMENDED IN SENATE AUGUST 1, 2007

AMENDED IN SENATE JULY 3, 2007

AMENDED IN ASSEMBLY MAY 2, 2007

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 424

Introduced by Assembly Member Gaines

February 16, 2007

An act to amend Sections 17039 and 23036 of, and to add and repeal Sections 17053.38 and 23636.15 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 424, as amended, Gaines. Income and corporation taxes: credit: defensible space.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, under both laws, allow for taxable years beginning on or after January 1, 2007, and before January 1, 2011, a credit in an amount equal to ~~25%~~ of the qualified costs, *as defined*, not to exceed ~~\$2,000~~ \$500 *per qualified property*, paid or incurred for *the creation of a* defensible space, which would be defined as a specified area around a qualified property, as defined, that is created by removing all brush, flammable vegetation, and combustible growth.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17039 of the Revenue and Taxation Code
2 is amended to read:
3 17039. (a) Notwithstanding any provision in this part to the
4 contrary, for the purposes of computing tax credits, the term “net
5 tax” means the tax imposed under either Section 17041 or 17048
6 plus the tax imposed under Section 17504 (relating to lump-sum
7 distributions) less the credits allowed by Section 17054 (relating
8 to personal exemption credits) and any amount imposed under
9 paragraph (1) of subdivision (d) and paragraph (1) of subdivision
10 (e) of Section 17560. Notwithstanding the preceding sentence, the
11 “net tax” shall not be less than the tax imposed under Section
12 17504 (relating to the separate tax on lump-sum distributions), if
13 any. Credits shall be allowed against “net tax” in the following
14 order:
15 (1) Credits that do not contain carryover or refundable
16 provisions, except those described in paragraphs (4) and (5).
17 (2) Credits that contain carryover provisions but do not contain
18 refundable provisions, except for those that are allowed to reduce
19 “net tax” below the tentative minimum tax, as defined by Section
20 17062.
21 (3) Credits that contain both carryover and refundable
22 provisions.
23 (4) The minimum tax credit allowed by Section 17063 (relating
24 to the alternative minimum tax).
25 (5) Credits that are allowed to reduce “net tax” below the
26 tentative minimum tax, as defined by Section 17062.
27 (6) Credits for taxes paid to other states allowed by Chapter 12
28 (commencing with Section 18001).
29 (7) Credits that contain refundable provisions but do not contain
30 carryover provisions.
31 The order within each paragraph shall be determined by the
32 Franchise Tax Board.
33 (b) Notwithstanding the provisions of Sections 17061 (relating
34 to refunds pursuant to the Unemployment Insurance Code) and
35 19002 (relating to tax withholding), the credits provided in those

1 sections shall be allowed in the order provided in paragraph (6) of
2 subdivision (a).

3 (c) (1) Notwithstanding any other provision of this part, no tax
4 credit shall reduce the tax imposed under Section 17041 or 17048
5 plus the tax imposed under Section 17504 (relating to the separate
6 tax on lump-sum distributions) below the tentative minimum tax,
7 as defined by Section 17062, except the following credits:

8 (A) The credit allowed by Section 17052.2 (relating to teacher
9 retention tax credit).

10 (B) The credit allowed by former Section 17052.4 (relating to
11 solar energy).

12 (C) The credit allowed by former Section 17052.5 (relating to
13 solar energy, repealed on January 1, 1987).

14 (D) The credit allowed by former Section 17052.5 (relating to
15 solar energy, repealed on December 1, 1994).

16 (E) The credit allowed by Section 17052.12 (relating to research
17 expenses).

18 (F) The credit allowed by former Section 17052.13 (relating to
19 sales and use tax credit).

20 (G) The credit allowed by former Section 17052.15 (relating to
21 Los Angeles Revitalization Zone sales tax credit).

22 (H) The credit allowed by Section 17052.25 (relating to the
23 adoption costs credit).

24 (I) The credit allowed by Section 17053.5 (relating to the
25 renter's credit).

26 (J) The credit allowed by former Section 17053.8 (relating to
27 enterprise zone hiring credit).

28 (K) The credit allowed by former Section 17053.10 (relating to
29 Los Angeles Revitalization Zone hiring credit).

30 (L) The credit allowed by former Section 17053.11 (relating to
31 program area hiring credit).

32 (M) For each taxable year beginning on or after January 1, 1994,
33 the credit allowed by former Section 17053.17 (relating to Los
34 Angeles Revitalization Zone hiring credit).

35 (N) The credit allowed by Section 17053.33 (relating to targeted
36 tax area sales or use tax credit).

37 (O) The credit allowed by Section 17053.34 (relating to targeted
38 tax area hiring credit).

39 (P) The credit allowed by Section 17053.49 (relating to qualified
40 property).

- 1 (Q) The credit allowed by Section 17053.70 (relating to
2 enterprise zone sales or use tax credit).
- 3 (R) The credit allowed by Section 17053.74 (relating to
4 enterprise zone hiring credit).
- 5 (S) The credit allowed by Section 17054 (relating to credits for
6 personal exemption).
- 7 (T) The credit allowed by Section 17054.5 (relating to the credits
8 for a qualified joint custody head of household and a qualified
9 taxpayer with a dependent parent).
- 10 (U) The credit allowed by Section 17054.7 (relating to the credit
11 for a senior head of household).
- 12 (V) The credit allowed by former Section 17057 (relating to
13 clinical testing expenses).
- 14 (W) The credit allowed by Section 17058 (relating to
15 low-income housing).
- 16 (X) The credit allowed by Section 17061 (relating to refunds
17 pursuant to the Unemployment Insurance Code).
- 18 (Y) Credits for taxes paid to other states allowed by Chapter 12
19 (commencing with Section 18001).
- 20 (Z) The credit allowed by Section 19002 (relating to tax
21 withholding).
- 22 (AA) The credit allowed by Section 17053.38 (relating to the
23 defensible space credit).
- 24 (2) Any credit that is partially or totally denied under paragraph
25 (1) shall be allowed to be carried over and applied to the net tax
26 in succeeding taxable years, if the provisions relating to that credit
27 include a provision to allow a carryover when that credit exceeds
28 the net tax.
- 29 (d) Unless otherwise provided, any remaining carryover of a
30 credit allowed by a section that has been repealed or made
31 inoperative shall continue to be allowed to be carried over under
32 the provisions of that section as it read immediately prior to being
33 repealed or becoming inoperative.
- 34 (e) (1) Unless otherwise provided, if two or more taxpayers
35 (other than husband and wife) share in costs that would be eligible
36 for a tax credit allowed under this part, each taxpayer shall be
37 eligible to receive the tax credit in proportion to his or her
38 respective share of the costs paid or incurred.
- 39 (2) In the case of a partnership, the credit shall be allocated
40 among the partners pursuant to a written partnership agreement in

1 accordance with Section 704 of the Internal Revenue Code, relating
2 to partner's distributive share.

3 (3) In the case of a husband and wife who file separate returns,
4 the credit may be taken by either or equally divided between them.

5 (f) Unless otherwise provided, in the case of a partnership, any
6 credit allowed by this part shall be computed at the partnership
7 level, and any limitation on the expenses qualifying for the credit
8 or limitation upon the amount of the credit shall be applied to the
9 partnership and to each partner.

10 (g) (1) With respect to any taxpayer that directly or indirectly
11 owns an interest in a business entity that is disregarded for tax
12 purposes pursuant to Section 23038 and any regulations thereunder,
13 the amount of any credit or credit carryforward allowable for any
14 taxable year attributable to the disregarded business entity shall
15 be limited in accordance with paragraphs (2) and (3).

16 (2) The amount of any credit otherwise allowed under this part,
17 including any credit carryover from prior years, that may be applied
18 to reduce the taxpayer's "net tax," as defined in subdivision (a),
19 for the taxable year shall be limited to an amount equal to the
20 excess of the taxpayer's regular tax (as defined in Section 17062),
21 determined by including income attributable to the disregarded
22 business entity that generated the credit or credit carryover, over
23 the taxpayer's regular tax (as defined in Section 17062), determined
24 by excluding the income attributable to that disregarded business
25 entity. No credit shall be allowed if the taxpayer's regular tax (as
26 defined in Section 17062), determined by including the income
27 attributable to the disregarded business entity, is less than the
28 taxpayer's regular tax (as defined in Section 17062), determined
29 by excluding the income attributable to the disregarded business
30 entity.

31 (3) If the amount of a credit allowed pursuant to the section
32 establishing the credit exceeds the amount allowable under this
33 subdivision in any taxable year, the excess amount may be carried
34 over to subsequent taxable years pursuant to subdivisions (c) and
35 (d).

36 (h) (1) Unless otherwise specifically provided, in the case of a
37 taxpayer that is a partner or shareholder of an eligible pass-through
38 entity described in paragraph (2), any credit passed through to the
39 taxpayer in the taxpayer's first taxable year beginning on or after
40 the date the credit is no longer operative may be claimed by the

1 taxpayer in that taxable year, notwithstanding the repeal of the
2 statute authorizing the credit prior to the close of that taxable year.

3 (2) For purposes of this subdivision, “eligible pass-through
4 entity” means any partnership or S corporation that files its return
5 on a fiscal year basis pursuant to Section 18566, and that is entitled
6 to a credit pursuant to this part for the taxable year that begins
7 during the last year the credit is operative.

8 (3) This subdivision shall apply to credits that become
9 inoperative on or after the operative date of the act adding this
10 subdivision.

11 SEC. 2. Section 17053.38 is added to the Revenue and Taxation
12 Code, to read:

13 17053.38. (a) For each taxable year beginning on or after
14 January 1, 2007, and before January 1, 2011, there shall be allowed
15 a credit against the “net tax,” as defined by Section 17039, in an
16 amount equal to ~~25 percent~~ of the qualified costs paid or ~~incurred~~
17 ~~during the taxable year.~~ *incurred by a qualified taxpayer to create*
18 *a defensible space during the taxable year. The credit shall not*
19 *exceed five hundred dollars (\$500) for each qualified property.*

20 (b) For purposes of this section, the following definitions shall
21 apply:

22 (1) “Defensible space” means that area created by removing all
23 brush, flammable vegetation, and combustible growth that is
24 located within ~~at least~~ 100 feet from the structural components of
25 a dwelling located on a qualified property.

26 (2) “Dwelling” has the same meaning as described in Section
27 704.710 of the Code of Civil Procedure, *but does not include a*
28 *boat or other waterborne vessel.*

29 (3) “Fire department” means the local fire department that has
30 jurisdiction over the qualified property.

31 (4) “Licensed contractor” means a contractor with an active
32 license issued by the Contractors’ State License Board.

33 ~~(5) “Qualified costs” means any costs paid or incurred during~~
34 ~~the taxable year, not to exceed two thousand dollars (\$2,000) per~~
35 ~~qualified property, to a licensed contractor to create defensible~~
36 ~~space.~~

37 (5) *“Qualified costs” means 25 percent of the costs paid or*
38 *incurred by a qualified taxpayer for labor and services performed*
39 *by a licensed contractor to create a defensible space around a*

1 *qualified property, which costs are evidenced by records and*
2 *documents including, but not limited to, a written certification.*

3 (6) “Qualified property” means any ~~parcel of real property~~
4 *dwelling* located within the California portion of the region defined
5 in Public Law 96-551 and the Tahoe Regional Planning Compact,
6 ~~upon which a dwelling, a house, or residential apartment building,~~
7 ~~is located.~~ *Compact.*

8 (7) “Qualified taxpayer” means any taxpayer who owns qualified
9 property.

10 (8) “Written certification” means a written evaluation by the
11 fire department that certifies the establishment of defensible space,
12 provided that the certification shall be obtained within 30 days
13 after completion of the work establishing the defensible space.
14 The taxpayer shall retain a copy of the certification and provide it
15 to the Franchise Tax Board upon request.

16 (c) *A credit shall not be allowed under this section unless a*
17 *qualified taxpayer provides a written certification upon request*
18 *to the Franchise Tax Board.*

19 ~~(e)~~

20 (d) Any deduction otherwise allowed under this part for qualified
21 costs shall not be reduced by the amount of the credit allowed
22 under this section.

23 ~~(d)~~

24 (e) If the credit allowed by this section exceeds the “net tax,”
25 the excess may be carried over to reduce the “net tax” in the
26 following year, and in the succeeding four years, if necessary, until
27 the credit is exhausted.

28 ~~(e)~~

29 (f) This section shall remain in effect only until December 1,
30 2011, and as of that date is repealed.

31 SEC. 3. Section 23036 of the Revenue and Taxation Code is
32 amended to read:

33 23036. (a) (1) The term “tax” includes any of the following:

34 (A) The tax imposed under Chapter 2 (commencing with Section
35 23101).

36 (B) The tax imposed under Chapter 3 (commencing with Section
37 23501).

38 (C) The tax on unrelated business taxable income, imposed
39 under Section 23731.

40 (D) The tax on S corporations imposed under Section 23802.

1 (2) The term “tax” does not include any amount imposed under
2 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
3 of subdivision (f) of Section 24667.

4 (b) For purposes of Article 5 (commencing with Section 18661)
5 of Chapter 2, Article 3 (commencing with Section 19031) of
6 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
7 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
8 and for purposes of Sections 18601, 19001, and 19005, the term
9 “tax” also includes all of the following:

10 (1) The tax on limited partnerships, imposed under Section
11 17935, the tax on limited liability companies, imposed under
12 Section 17941, and the tax on registered limited liability
13 partnerships and foreign limited liability partnerships imposed
14 under Section 17948.

15 (2) The alternative minimum tax imposed under Chapter 2.5
16 (commencing with Section 23400).

17 (3) The tax on built-in gains of S corporations, imposed under
18 Section 23809.

19 (4) The tax on excess passive investment income of S
20 corporations, imposed under Section 23811.

21 (c) Notwithstanding any other provision of this part, credits are
22 allowed against the “tax” in the following order:

23 (1) Credits that do not contain carryover provisions.

24 (2) Credits that, when the credit exceeds the “tax,” allow the
25 excess to be carried over to offset the “tax” in succeeding taxable
26 years, except for those credits that are allowed to reduce the “tax”
27 below the tentative minimum tax, as defined by Section 23455.
28 The order of credits within this paragraph shall be determined by
29 the Franchise Tax Board.

30 (3) The minimum tax credit allowed by Section 23453.

31 (4) Credits that are allowed to reduce the “tax” below the
32 tentative minimum tax, as defined by Section 23455.

33 (5) Credits for taxes withheld under Section 18662.

34 (d) Notwithstanding any other provision of this part, each of
35 the following applies:

36 (1) No credit may reduce the “tax” below the tentative minimum
37 tax (as defined by paragraph (1) of subdivision (a) of Section
38 23455), except the following credits:

39 (A) The credit allowed by former Section 23601 (relating to
40 solar energy).

- 1 (B) The credit allowed by former Section 23601.4 (relating to
2 solar energy).
- 3 (C) The credit allowed by former Section 23601.5 (relating to
4 solar energy).
- 5 (D) The credit allowed by Section 23609 (relating to research
6 expenditures).
- 7 (E) The credit allowed by former Section 23609.5 (relating to
8 clinical testing expenses).
- 9 (F) The credit allowed by Section 23610.5 (relating to
10 low-income housing).
- 11 (G) The credit allowed by former Section 23612 (relating to
12 sales and use tax credit).
- 13 (H) The credit allowed by Section 23612.2 (relating to enterprise
14 zone sales or use tax credit).
- 15 (I) The credit allowed by former Section 23612.6 (relating to
16 Los Angeles Revitalization Zone sales tax credit).
- 17 (J) The credit allowed by former Section 23622 (relating to
18 enterprise zone hiring credit).
- 19 (K) The credit allowed by Section 23622.7 (relating to enterprise
20 zone hiring credit).
- 21 (L) The credit allowed by former Section 23623 (relating to
22 program area hiring credit).
- 23 (M) The credit allowed by former Section 23623.5 (relating to
24 Los Angeles Revitalization Zone hiring credit).
- 25 (N) The credit allowed by former Section 23625 (relating to
26 Los Angeles Revitalization Zone hiring credit).
- 27 (O) The credit allowed by Section 23633 (relating to targeted
28 tax area sales or use tax credit).
- 29 (P) The credit allowed by Section 23634 (relating to targeted
30 tax area hiring credit).
- 31 (Q) The credit allowed by Section 23649 (relating to qualified
32 property).
- 33 (R) The credit allowed by Section 23636.15 (relating to the
34 defensible space credit).
- 35 (2) No credit against the tax may reduce the minimum franchise
36 tax imposed under Chapter 2 (commencing with Section 23101).
- 37 (e) Any credit which is partially or totally denied under
38 subdivision (d) is allowed to be carried over to reduce the “tax”
39 in the following year, and succeeding years if necessary, if the

1 provisions relating to that credit include a provision to allow a
2 carryover of the unused portion of that credit.

3 (f) Unless otherwise provided, any remaining carryover from a
4 credit that has been repealed or made inoperative is allowed to be
5 carried over under the provisions of that section as it read
6 immediately prior to being repealed or becoming inoperative.

7 (g) Unless otherwise provided, if two or more taxpayers share
8 in costs that would be eligible for a tax credit allowed under this
9 part, each taxpayer is eligible to receive the tax credit in proportion
10 to his or her respective share of the costs paid or incurred.

11 (h) Unless otherwise provided, in the case of an S corporation,
12 any credit allowed by this part is computed at the S corporation
13 level, and any limitation on the expenses qualifying for the credit
14 or limitation upon the amount of the credit applies to the S
15 corporation and to each shareholder.

16 (i) (1) With respect to any taxpayer that directly or indirectly
17 owns an interest in a business entity that is disregarded for tax
18 purposes pursuant to Section 23038 and any regulations thereunder,
19 the amount of any credit or credit carryforward allowable for any
20 taxable year attributable to the disregarded business entity is limited
21 in accordance with paragraphs (2) and (3).

22 (2) The amount of any credit otherwise allowed under this part,
23 including any credit carryover from prior years, that may be applied
24 to reduce the taxpayer's "tax," as defined in subdivision (a), for
25 the taxable year is limited to an amount equal to the excess of the
26 taxpayer's regular tax (as defined in Section 23455), determined
27 by including income attributable to the disregarded business entity
28 that generated the credit or credit carryover, over the taxpayer's
29 regular tax (as defined in Section 23455), determined by excluding
30 the income attributable to that disregarded business entity. No
31 credit is allowed if the taxpayer's regular tax (as defined in Section
32 23455), determined by including the income attributable to the
33 disregarded business entity is less than the taxpayer's regular tax
34 (as defined in Section 23455), determined by excluding the income
35 attributable to the disregarded business entity.

36 (3) If the amount of a credit allowed pursuant to the section
37 establishing the credit exceeds the amount allowable under this
38 subdivision in any taxable year, the excess amount may be carried
39 over to subsequent taxable years pursuant to subdivisions (d), (e),
40 and (f).

1 (j) (1) Unless otherwise specifically provided, in the case of a
2 taxpayer that is a partner or shareholder of an eligible pass-through
3 entity described in paragraph (2), any credit passed through to the
4 taxpayer in the taxpayer's first taxable year beginning on or after
5 the date the credit is no longer operative may be claimed by the
6 taxpayer in that taxable year, notwithstanding the repeal of the
7 statute authorizing the credit prior to the close of that taxable year.

8 (2) For purposes of this subdivision, "eligible pass-through
9 entity" means any partnership or S corporation that files its return
10 on a fiscal year basis pursuant to Section 18566, and that is entitled
11 to a credit pursuant to this part for the taxable year that begins
12 during the last year a credit is operative.

13 (3) This subdivision applies to credits that become inoperative
14 on or after the operative date of the act adding this subdivision.

15 SEC. 4. Section 23636.15 is added to the Revenue and Taxation
16 Code, to read:

17 23636.15. (a) For each taxable year beginning on or after
18 January 1, 2007, and before January 1, 2011, there shall be allowed
19 a credit against the "tax," as defined by Section 23036, in an
20 amount equal to ~~25 percent of the qualified costs paid or incurred~~
21 ~~during the taxable year.~~ *incurred by a qualified taxpayer to create*
22 *a defensible space during the taxable year. The credit shall not*
23 *exceed five hundred dollars (\$500) for each qualified property.*

24 (b) For purposes of this section, the following definitions shall
25 apply:

26 (1) "Defensible space" means that area created by removing all
27 brush, flammable vegetation, or combustible growth that is located
28 within ~~at least~~ 100 feet of the structural components of a dwelling
29 that is located on a qualified property.

30 (2) "Dwelling" has the same meaning as described in Section
31 704.710 of the Code of Civil Procedure, *but does not include a*
32 *boat or other waterborne vessel.*

33 (3) "Fire department" means the local fire department that has
34 jurisdiction over the qualified property.

35 (4) "Licensed contractor" means a contractor with an active
36 license issued by the Contractors' State License Board.

37 ~~(5) "Qualified costs" means any costs paid or incurred during~~
38 ~~the taxable year, not to exceed two thousand dollars (\$2,000) per~~
39 ~~qualified property, to a licensed contractor to create defensible~~
40 ~~space.~~

1 (5) “Qualified costs” means 25 percent of the costs paid or
 2 incurred by a qualified taxpayer for labor and services performed
 3 by a licensed contractor to create a defensible space around a
 4 qualified property, which costs are evidenced by records and
 5 documents including, but not limited to, a written certification.

6 (6) “Qualified property” means any ~~parcel of real property~~
 7 dwelling located within the California portion of the region defined
 8 in Public Law 96-551 and the Tahoe Regional Planning Compact,
 9 upon which a dwelling, a house, or residential apartment building,
 10 is located. *Compact.*

11 (7) “Qualified taxpayer” means any taxpayer who owns qualified
 12 property.

13 (8) “Written certification” means a written evaluation by the
 14 fire department that certifies the establishment of defensible space,
 15 provided that the certification shall be obtained within 30 days
 16 after completion of the work establishing the defensible space.
 17 The taxpayer shall retain a copy of the certification and provide it
 18 to the Franchise Tax Board upon request.

19 (c) A credit shall not be allowed under this section unless a
 20 qualified taxpayer provides a written certification upon request
 21 to the Franchise Tax Board.

22 (e)

23 (d) Any deduction otherwise allowed under this part for qualified
 24 costs shall not be reduced by the amount of the credit allowed
 25 under this section.

26 (d)

27 (e) If the credit allowed by this section exceeds the “tax,” the
 28 excess may be carried over to reduce the “tax” in the following
 29 year, and in the succeeding four years, if necessary, until the credit
 30 is exhausted.

31 (e)

32 (f) This section shall remain in effect only until December 1,
 33 2011, and as of that date is repealed.

34 SEC. 5. This act provides for a tax levy within the meaning of
 35 Article IV of the Constitution and shall go into immediate effect.